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TITLE VI PLAN

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Montana Department of Highways
Title VI Plan
Submitted September 5, 1988

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NONDISCRIMINATION POLICY STATEMENT
AND ASSURANCES

Title VI of the 1964 Civil Rights Act provides that no person in the United States shall on the grounds of race, color, or national origin be discriminated against under any program or activity receiving Federal financial assistance. A prohibition against discrimination on the grounds of sex is included by amendment. "The Title VI Program" also refers, where appropriate, to other Federal civil rights statutes. The State of Montana through its Constitution, codes and rules forbids discrimination in many areas.

The Montana Department of Highways assures that no person shall, as provided by Federal and State civil rights laws, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Federal assistance is received.

The Civil Rights Bureau of the Montana Department of Highways is responsible for initiating and monitoring Title VI activities, preparing required reports and other State Highway Agency responsibilities as required by 23 CFR 200.

Revised date

By Gary J. Wicks, Director

I. OVERVIEW

A. PURPOSE

To provide guidelines for the implementation of the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations by the Montana Department of Highways (MDOH), and define MDOH organizational utilization procedures.

B. APPLICATION

The provisions of this Title VI Plan (Plan) apply to all recipients of Federal assistance within and through MDOH.

C. DEFINITIONS

All applicable definitions are found in 23 CFR 200.5. See Appendix I.

D. AUTHORITIES

Federal statutes to the extent they apply to programs receiving Federal financial assistance subject to Title VI are found in 23 CFR 200.5 (p) (1), (2), (3), (4), (5) and (6). (See Appendix 1)

Other federal statutes with related authority which may apply:

1. Title VII of the 1964 Civil Rights Act as amended.

2. The Age Discrimination in Employment Act.
    a. 45 CFR 90
3. The Vocational Rehabilitation Act of 1973.
    a. 49 CFR 27.

State nondiscrimination statutes:

1. The Montana Human Rights Act, Title 49, Chapter 2, M.C.A.

2. The Governmental Code of Fair Practices, Title 49, Chapter 3, M.C.A.

E. ORGANIZATION

The organizational chart for MDOH is found in Appendix II.

The Director, MDOH, has Title VI responsibility. He has delegated the state highway agency responsibilities as specified in 23 CFR 200.9 4(b) to the Chief, Civil Rights Bureau (CRB) for implementation. A Title VI Equal Employment Opportunity Coordinator/Title VI Specialist has been appointed within the CRB who is responsible for initiating and monitoring Title VI activities, preparing required reports, conducting complaint investigations and reviews and other such requirements as proscribed in the relevant statutes and regulations. All reports, investigations and reviews will be submitted to the Chief, CRB, within the prescribed time

constraints. The Director, MDOH, will be notified of any deficiencies or problems.

The Title VI Program within MDOH is applicable to those recipients of Federal assistance. Such recipients were identified with the assistance of the Centralized Services Division, MDOH. Specific agency Title VI plans are outlined in "II AGENCY RESPONSIBILITIES" for the respective recipients.

F. YEARLY GOALS AND OBJECTIVES

The "Goals and Objectives Report" will be submitted to FHWA Division office by September 20 of each year.

G. END OF YEAR ACCOMPLISHMENT REPORT

The "End of Year Accomplishment Report" will be submitted to FHWA Division office by September 20 of each year.

AGENCY RESPONSIBILITIES

II. AGENCY RESPONSIBILITIES

A. ADMINISTRATION

1. All employees have been identified by race, color, sex and national origin to the extent necessary to evaluate and/or ensure equality of opportunity for and nondiscriminatory treatment of beneficiaries.

2. Title VI procedures are in place for all affected contractors and are discussed in specific program areas.

3. Appropriate Title VI provisions are contained in consultant contracts and are titled "Compliance with Title VI of the Civil Rights Act of 1964."

4. Procedures to ensure women and minorities receive equal consideration for participation in research contracts are currently being reviewed.

B. ENGINEERING DIVISION

1. RIGHT-OF-WAY

a) Real Estate Appraisers:

Each year the Supervisor of the Appraisal Section will contact state, local and private appraisal companies and organizations and the MDOH Disadvantaged Business Enterprise and Women Business Enterprise (DBE) Section of the CRB to determine the availability of qualified minority/female appraisers.

Fee appraisers are independent contractors and are selected based on competency, estimated delivery time and the amount of the fee.

b) Negotiation:

The negotiation history identifies the owner of each parcel of land including Title VI protected classes. Each contact with the landowner will be documented. Interpreters will be used if language barriers are present.

c) Administrative Settlements/Advance Acquisitions:

All requests for advance acquisition and administrative settlements will be identified by Title VI protected classes. Documentation will be recorded in the "history file."

d) Relocation Assistance:

The following procedure applies regarding relocation:

- Relocatees assisted will be identified by Title VI protected class.

- Interpreters will be used if language barriers are present.

e) Right-of-Way Attorneys

Federal financial assistance is received through the Right-of-Way Bureau. Monies are expended primarily for related operational or personnel expense. There appears to be no Title VI impact.

2. PRECONSTRUCTION BUREAU

a) Consultant Selection:

In order to assure that minority/female consultant firms are receiving every opportunity to perform work for MDOH, the Preconstruction Bureau utilizes the Consultant Selection Procedures which have been previously approved by FHWA. Consultant contracts will be reviewed for possible inclusion of DBE goals.

b) Public Hearings Unit:

(1) MDOH makes every effort to assure the Title VI protected classes are made aware of all public hearings. The actions taken to implement this assurance include but are not limited to:

- advertising in newspapers circulated in the area including identified minority papers,

- issuing news releases to radio and TV stations in the affected areas,

- arranging separate hearings for Tribal Councils when appropriate,

(2) Public hearings are held in locations reasonably convenient for members of the Title VI protected class. If distances are a factor, hearings may be held in more than one location.

(3) During the public hearing:

- translators will be provided if language barriers are present,

- information regarding the effect of the project on Title VI protected classes will be provided,

- information will be provided in a non-technical manner,

- information regarding fair housing requirements will be provided,

- information regarding hardship acquisition will be provided,

- sufficient time will be provided to reasonably answer questions presented by the public.

(4) Conclusion of Hearing.

At the conclusion of the hearing a written summation will be prepared which will include references to Title VI issues.

c) Location and Design Section

Each alternate location will include an evaluation to determine the affect the proposed locations will have on members of the Title VI protected classes. Evaluations will include but not be limited to:

- identifying the approximate number and location of Title VI protected classes persons covered by the affected area and/or affected by each alternate location,

- determining the social-economic characteristics of the individuals and groups in item number one,

- evaluating each alternative using the data obtained above. Documentation of the evaluations on these groups will be maintained in the Headquarter's Location and Design files,

- refining the data for the selected location identified above, and evaluate the design alternatives using this refined data.

When consultants are used to perform location or design functions, the above activities will be performed by the consultant and monitored by MDOH.

d) Contract Plans Section

Opportunity for free, open and competitive bidding is assured by advertising in local newspapers, minority newspapers, and newspapers having major circulation throughout the state.

Awarding of bids is on the basis of low bid and meeting the licensing, bonding and DBE requirements.

e) Environmental Unit

Assures the DBE's are offered an opportunity to participate in special landscaping and/or revegetation contracts. Native Americans will be contacted and considered for cultural resource work on reservations.

3. MATERIALS BUREAU

a) Research Program

Purpose:

To manage and transfer technology pertaining to research of physical and technical aspects of transportation systems between MDOH, FHWA & National Highway Institute.

Historically award of research projects has been made to units of the State University system.

b) Fabrication Inspection Program

Purpose:

To assure selection of professional fabrication testing, inspection, and engineering services is done in a non-discriminating manner. See Appendix IV.

The Materials Bureau will attempt to locate qualified DBE by advertising in publications that direct circulation toward the minority community.

An affidavit of Title VI Compliance is required from each firm performing work.

4. CONSTRUCTION BUREAU

The Construction Bureau assures that required documents are included in all Federal-aid contracts and subcontracts.

The Construction Bureau monitors newly awarded contracts to assure the Contract Plans Unit has included all federally required documents.

Prime contracts requiring DBE participation are reviewed to assure that previously committed work is awarded to the proper subcontractors.

5. BRIDGE BUREAU

Both on-system and off-system bridges will be maintained in a standard inventory and will include bridges located on or near Title VI protected groups. Bridge inspections will be conducted at regular intervals.

C. PROGRAM DEVELOPMENT DIVISION

An annual evaluation of Title VI impacts resulting from the overall program developed by the Division will be conducted as part of the yearly in-house Title VI review.

When it becomes necessary for the Division to obtain consultant services, the DBE office will be notified to ensure that information is properly distributed. Contracts with firms or individuals performing consultant services will include Title VI compliance requirements. Periodic desk audits will be conducted throughout the duration of the contract to insure that Title VI effects are being addressed.

1. PROJECT ANALYSIS BUREAU

Title VI related impacts will be addressed in appropriate studies and plans.

MDOH will identify potential impacts on Title VI protected classes at the project nomination stage of project selection procedures. Project nomination forms will include a section requiring identification of potential project impacts on Title VI protected groups. Personnel responsible for submitting nomination forms will be trained in Title VI impact identification by the appropriate DOH Title VI representative.

Data concerning known locations of Title VI protected groups in rural areas will be compiled to assist in Title VI impact identification.

2. PLANNING AND STATISTICS BUREAU

a) Rural Planning Section

Title VI related impacts will be addressed in appropriate studies and plans.

MDOH will identify potential Title VI impacts resulting from proposed systems actions. Those impacts identified will be discussed in systems action documentation.

b) Urban Planning Section

The Urban Planning Section will obtain available data identifying concentrations of Title VI protected populations within all urbanized and small urban areas. Title VI will be addressed in all studies and plans prepared by the section.

Metropolitan Planning Organizations (MPO's) will maintain an approved Title VI Plan. See Appendix V.

Title VI reviews will be conducted in those urban and urbanized areas with an active formal transportation planning process. The purpose of the review is to assure that Title VI protected

populations are being appropriately identified, that Title VI protected groups are being solicited for input into the transportation planning process, and that the Title VI Plan prepared by the MPO is being followed and effectively addresses Title VI.

The PDD Title VI Representative, assisted by a Transportation Planner and the CRB, will conduct Title VI reviews of MPO's on a rotating schedule. One MPO will be reviewed each year.

Urban areas with an active formal transportation planning process will be reviewed on a rotating basis at the rate of one per year.

Urban Planning Section staff will monitor activities in areas with no active formal transportation planning process to assure that Title VI considerations are being addressed in all plans, studies and project proposals.

Program Development Division Title VI activities unique to specific calendar years will be described in Action Items. Action Items will be developed for each calendar year.

D. PERSONNEL DIVISION

1. SAFETY & TRAINING

The Training Section will distribute copies of the NHI course catalog to each Headquarters Division Office and to each District Office. The catalog is also posted on Headquarters bulletin boards. Course descriptions are provided to persons expressing an interest. Statistical data is maintained indicating the number of minorities and females participating in all MDOH training activities.

2. DISADVANTAGED BUSINESS ENTERPRISE/WOMEN BUSINESS ENTERPRISE PROGRAM

Purpose:

The purpose of the DBE is to assure that minority and women owned businesses receive an equal opportunity to bid on Federal-aid highway projects.

Authorities:

The MDOH DBE Program is in accordance with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) and has been approved by Division and Regional level of FHWA.

Procedures:

To assure that opportunities are made available for minority and women owned businesses to bid on Federal-aid highway projects the DBE program will:

- seek out minority and women owned businesses which may want to become certified,

- conduct monthly board meetings to certify or decertify minority and/or women owned firms,

- monitor work performed by certified DBE firms and prime contractors,

- provide technical assistance to contractors,

- participate in monthly goal setting meeting to establish DBE goals on Federal-aid Highway projects,

- monitor DBE participation levels in Federal-aid contracts,

- publish a monthly DBE newsletter,

- publish a DBE directory of certified firms.

3. OJT SUPPORTIVE SERVICES

To assure that opportunities are made available to Title VI protected persons, MDOH will participate in and monitor a training program aimed at increasing the skills of females and minority group individuals.

E. DISTRICT OFFICES

District Centralized Services Supervisors will assume the Title VI responsibilities in each District. Training will be provided during October 1988. After the training has been completed, Title VI plans for the Districts will be developed and implemented.

COMPLAINT PROCEDURES

III. COMPLAINT PROCEDURES

A. PURPOSE

The purpose of the complaint procedures is to facilitate resolution of the problem at the lowest level possible. The procedure must function to determine whether or not a violation of a law or regulation has occurred, and if so, the appropriate means for relief and/or corrective action. It is developed under the directive of 23 CFR 200.99(b)(3).

A log shall be maintained of all complaints. A copy of the complaint, together with a copy of MDOH's report of the investigation shall be forwarded to FHWA within 60 days of the date the complaint was received by the MDOH.

B. DEFINITIONS

1. Chief: means the responsible administrative officer of the CRB.

2. Civil Rights Bureau (CRB): means that Bureau of the Personnel Division, MDOH with the responsibility to investigate Title VI complaints within MDOH.

3. Complaint: means a complaint alleging a violation of any policy, procedure, or practice which would be prohibited by Title VI and other federal and state civil rights laws, rules, and regulations.

4. Complainant: means any aggrieved person or individual who submits a complaint.

5. Complaint Investigation Form: means the form which shall, pursuant to 23 CFR 200.9(b)(3), identify each complainant by race, color, sex or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; and other pertinent information. A sample "form" is found on page 13.

6. Day: means a calendar day.

7. Federal and State Civil Rights Laws, Rules and Regulations: See "I OVERVIEW, D Authority."

8. Investigator: the person within the CRB, normally the Title VI Representative, with the assigned responsibility to investigate complaints.

9. Respondent: means any person, persons or agency against whom a complaint is filed.

10. Title VI: means Title VI of the 1964 Civil Rights Act (78 Stat.252, 42 U.S.C., Sec.2000d), the implementing regulations and any memoranda, directives, guidelines or subsequent legislation that may be issued or enacted.

11. Title VI Representative: The individual within an MDOH respective program area with Title VI responsibilities.

C. BASIC PROCEDURAL RIGHTS (Applicable to all levels of the complaint process)

1. Each party shall have the right to representation, to present witnesses and evidence, and to question opposing witnesses.

2. Intimidation or retaliation of any kind is prohibited by law.

3. This procedure does not deny the right of the complainant to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination.

D. PROCEDURE

1. A person with a complaint should first discuss it with the responsible person or persons involved with the objective of resolving the matter promptly and informally. Employees who may be subject to the limited Title VI employment coverage should first discuss the problem with their supervisor. Such discussion shall occur as soon as practical after the alleged incident or from the date the complainant could reasonably become aware of such incident.

2. If the complaint is not resolved at step one, a written complaint may be filed with the Chief, CRB within 120 days of the alleged incident. The Chief shall notify the Administrator - Personnel Division and the MDOH Director of the complaint within five days.

3. Within seven days of the receipt of the complaint, an investigation by the CRB will commence. The investigation shall include interviews with the complainant and the respondent. Relevant data shall be obtained. Interrogatories may be used. Informal conferences between the affected parties under the direction of the investigator may be utilized for resolution.

4. Within 40 days of the receipt of the complaint, the investigator will prepare a written report for the Chief. The report shall include a report of the incident, persons interviewed, respective positions, a finding and recommendation for disposition.

5. The recommendation shall be reviewed by the Chief and forwarded to the director, MDOH, within five days of receipt.

6. The Director, MDOH, shall make the final determination for MDOH. Such determination shall be forward to FHWA within five days.

7. If the complaint cannot be resolved by MDOH, the complainant shall be notified of all appeal rights pursuant to 49 CFR 21 as well as other applicable forms including the right to counsel.

8. Should the complainant decide not to pursue the complaint, a signed statement shall be obtained.

COMPLAINT INVESTIGATION FORM

Montana Department of Highways
Civil Rights Bureau
2701 Prospect Avenue, Helena, MT 59620
(406) 444-6331

File No._____

Work Phone_____

Home Phone_____

Complainant_____

Address_____ City_____

Race: ___White ___Black (not Hispanic Origin) ___Hispanic
___Asian or Pacific Islander ___American Indian or
___Alaskan Native

Sex: ___Male ___Female

National Origin (Specify)_____

Respondent_____ (_____)
phone #

Address_____ City_____

Nature of Complaint (Please give details, dates, times, how treated differently from someone else. Use additional sheets if necessary):

_____

_____

_____

_____

_____

_____

_____

_____

Reason given for action:

_____

_____

_____

_____

_____

Witnesses (Use additional sheets if necessary):

Name_____ Home Phone_____

Work Phone_____

Address_____ City_____

Name_____ Home Phone_____

Work Phone_____

Address_____ City_____

Other pertinent complaint information:

_____

_____

_____

_____

_____ _____

Signature of Complainant Date

_____

FOR STATE USE ONLY

Recommend Disposition: Investigation completed_____
Date

___ Reasonable Cause

___ Recommended Action:_____

_____

___ No Cause Administrative Closure
(No jurisdiction Withdrawn
Untimely Other)

___ Settlement (specify)_____

_____

_____ _____ _____

Investigator Title Date

I concur with the above recommendation.

_____ _____ _____

Raymond D. Brown, Chief Civil Rights Bureau Date

I concur with the recommendation of the Civil Rights Bureau.

_____ _____ _____

Gary J. Wicks, Director Montana Department of Highways Date

Date forwarded to FHWA, Montana Division_____

MONTANA DEPARTMENT OF HIGHWAYS
Civil Rights Bureau

INQUIRY

NAME: _____ Date: _____

On _____ I discussed what I believe to be _____ discrimination in the area of _____ which occurred on or about _____ in that I was _____

_____

I (do - do not) wish the Civil Rights Bureau to pursue this matter. Further, I have been advised that such formal administrative complaints must be filed within 180 days of the alleged incident.

I have been advised that my avenues of appeal are:

a. Human Rights Commission
b. Equal Employment Opportunity Commission
c. State/Federal Courts, if applicable
d. Other Title VI procedures.

_____ _____
(signature) (date)

_____ _____
(witness) (date)

The complainant chose not to sign this document. He/she has been informed of formal complaint procedures. The complaint states that he/she does not wish this office to pursue the investigation.

_____
(name) (title) (date)

APPENDICIES

PART 200—TITLE VI PROGRAM AND RELATED STATUTES—IMPLEMENTATION AND REVIEW PROCEDURES

Sec.
200.1 Purpose.
200.3 Application of this part.
200.5 Definitions.
200.7 FHWA Title VI policy.
200.9 State highway agency responsibilities.
200.11 Procedures for processing Title VI reviews.
200.13 Certification acceptance.

AUTHORITY: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-3619; 42 U.S.C. 4601 to 4655; 23 U.S.C. 109(h); 23 U.S.C. 324.

SOURCE: 41 FR 53982, Dec. 10, 1976, unless otherwise noted.

§ 200.1 Purpose.

To provide guidelines for: (a) Implementing the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations, and (b) Conducting Title VI program compliance reviews relative to the Federal-aid highway program.

§ 200.3 Application of this part.

The provisions of this part are applicable to all elements of FHWA and provide requirements and guidelines for State highway agencies to implement the Title VI Program requirements. The related civil rights laws and regulations are listed under § 200.5(p) of this part. Title VI requirements for 23 U.S.C. 402 will be covered under a joint FHWA/NHTSA agreement.

§ 200.5 Definitions.

The following definitions shall apply for the purpose of this part:

(a) "Affirmative action"—A good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.

(b) "Beneficiary"—Any person or group of persons (other than States) entitled to receive benefits, directly or indirectly, from any federally assisted program, i.e., relocatees, impacted citizens, communities, etc.

(c) "Citizen participation"—An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

(d) "Compliance"—That satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

(e) "Deficiency status"—The interim period during which the recipient State has been notified of deficiencies, has not voluntarily complied with Title VI Program guidelines, but has not been declared in noncompliance by the Secretary of Transportation.

(f) "Discrimination"—That act (or action) whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, or national origin, has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under Title 23 U.S.C.

(g) "Facility"—Includes all, or any part of, structures, equipment or other real or personal property, or interests therein, and "the provision of facilities" includes the construction, expansion, renovation, remodeling, alternation or acquisition of facilities.

(h) "Federal assistance"—Includes:

(1) Grants and loans of Federal funds,

(2) The grant or donation of Federal property and interests in property,

(3) The detail of Federal personnel,

(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in

recognition of the public interest to be served by such sale or lease to the recipient, and

(5) Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

(i) "Noncompliance"—A recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort in implementing all of the Title VI requirements.

(j) "Persons"—Where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: "White not of Hispanic origin", "Black not of Hispanic origin", "Hispanic", "Asian or Pacific Islander", "American Indian or Alaskan Native." Additional subcategories based on national origin or primary language spoken may be used, where appropriate, on either a national or a regional basis.

(k) "Program"—Includes any highway, project, or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient.

(l) "State highway agency"—That department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" would be considered equivalent to "State highway agency" if the context so implies.

(m) "Program area officials"—The officials in FHWA who are responsible for carrying out technical program responsibilities.

(n) "Recipient"—Any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision, or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term "recipient" does not include any ultimate beneficiary under any such program.

(o) "Secretary"—The Secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal Highway Administrator to whom the Secretary has delegated his authority in specific cases.

(p) "Title VI Program"—The system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal statutes to the extent that they prohibit discrimination on the grounds of race, color, sex, or national origin in programs receiving Federal financial assistance of the type subject to Title VI itself. These Federal statutes are:

(1) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-d4 (49 CFR, Part 21; the standard DOT Title VI assurances signed by each State pursuant to DOT Order 1050.2; Executive Order 11764; 28 CFR 50.3);

(2) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655) (49 CFR Part 25; Pub. L. 91-646);

(3) Title VIII of the Civil Rights Act of 1968, amended 1974 (42 U.S.C. 3601-3619);

(4) 23 U.S.C. 109(h);

(5) 23 U.S.C. 324;

(6) Subsequent Federal-Aid Highway Acts and related statutes.

§ 200.7 FHWA Title VI policy.

It is the policy of the FHWA to ensure compliance with Title VI of the Civil Rights Act of 1964; 49 CFR, Part 21; and related statutes and regulations.

§ 200.9 State highway agency responsibilities.

(a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.

(1) Title 49, CFR Part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.

(2) Section 162a of the Federal-Aid Highway Act of 1973 (section 324, Title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances heretofore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal-Aid Highway Act of 1973 have been added to its assurances.

(3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State-signed assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.

(4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.

(b) *State actions.* (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

(2) Adequately staff the civil rights unit to effectively implement the State civil rights requirements.

(3) Develop procedures for prompt processing and disposition of Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by the State.

(4) Develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.

(5) Develop a program to conduct Title VI reviews of program areas.

(6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.

(7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

(8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.

(9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.

(10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

(11) Beginning October 1, 1976, each State highway agency shall annually

submit an updated Title VI implementing plan to the Regional Federal Highway Administrator for approval or disapproval.

(12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.

(13) Establishing procedures for pregrant and postgrant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.

(14) Establish procedures to identify and eliminate discrimination when found to exist.

(15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

§ 200.11 Procedures for processing Title VI reviews.

(a) If the regional Title VI review report contains deficiencies and recommended actions, the report shall be forwarded by the Regional Federal Highway Administrator to the Division Administrator, who will forward it with a cover letter to the State highway agency for corrective action.

(b) The division office, in coordination with the Regional Civil Rights Officer, shall schedule a meeting with the recipient, to be held not later than 30 days from receipt of the deficiency report.

(c) Recipients placed in a deficiency status shall be given a reasonable time, not to exceed 90 days after receipt of the deficiency letter, to voluntarily correct deficiencies.

(d) The Division Administrator shall seek the cooperation of the recipient in correcting deficiencies found during the review. The FHWA officials shall also provide the technical assistance and guidance needed to aid the recipient to comply voluntarily.

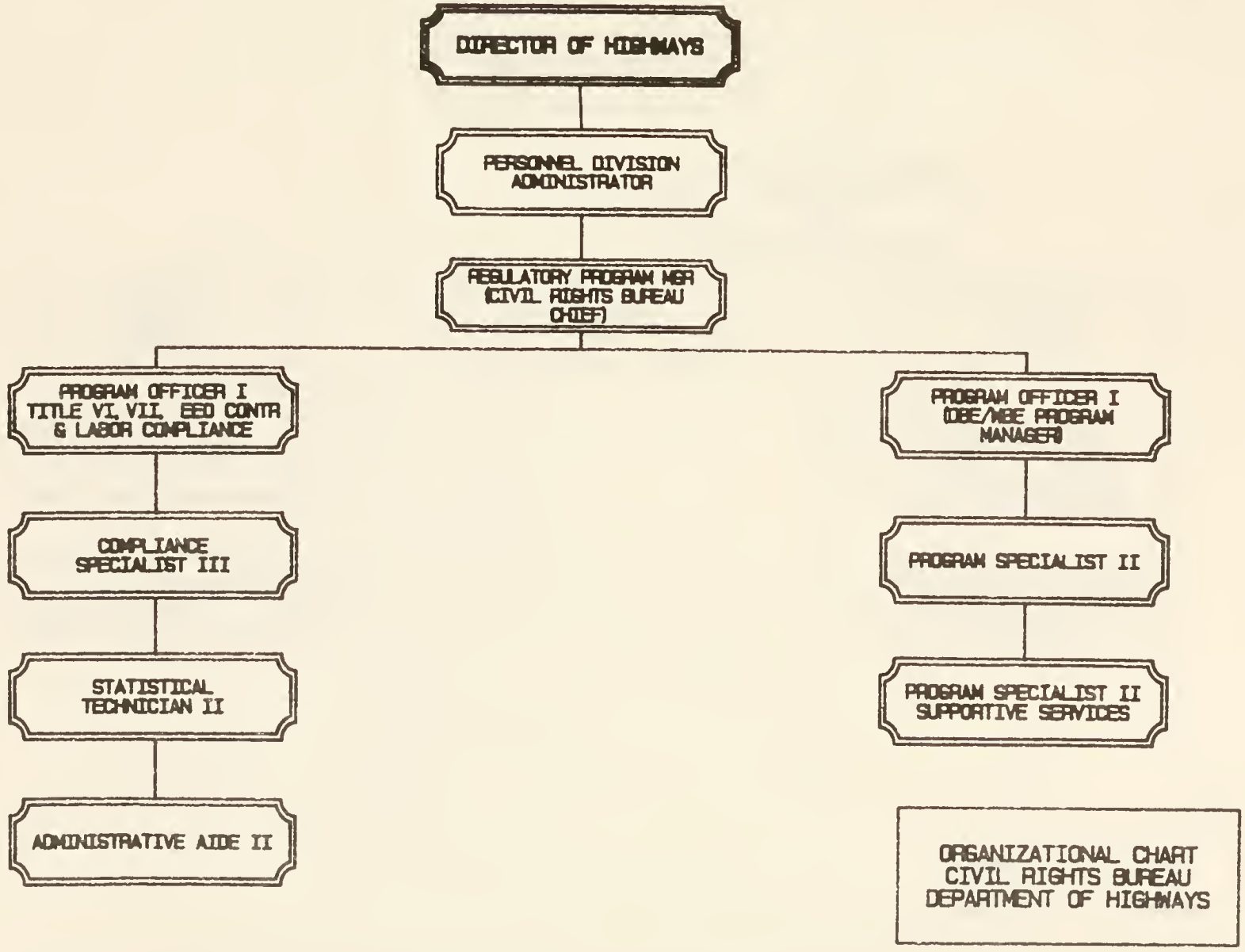
(e) When a recipient fails or refuses to voluntarily comply with requirements within the time frame allotted, the Division Administrator shall submit to the Regional Administrator two copies of the case file and a recommendation that the State be found in noncompliance.

(f) The Office of Civil Rights shall review the case file for a determination of concurrence or noncurrence with a recommendation to the Federal Highway Administrator. Should the Federal Highway Administrator concur with the recommendation, the file is referred to the Department of Transportation, Office of the Secretary, for appropriate action in accordance with 49 CFR.

§ 200.13 Certification acceptance.

Title VI and related statutes requirements apply to all State highway agencies. States and FHWA divisions operating under certification acceptance shall monitor the Title VI aspects of the program by conducting annual reviews and submitting required reports in accordance with guidelines set forth in this document.

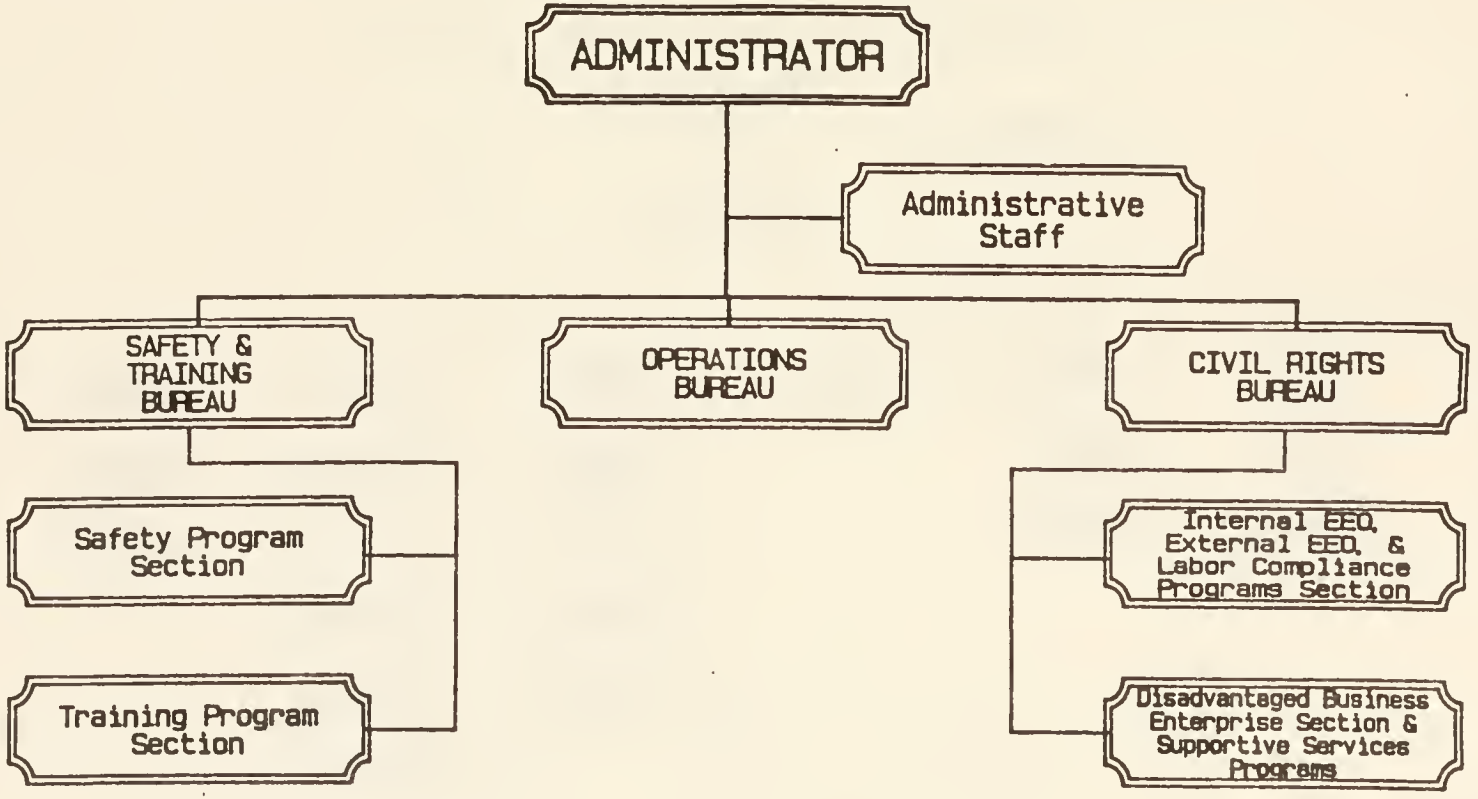
CIVIL RIGHTS BUREAU


DIRECTOR OF HIGHWAYS
PERSONNEL DIVISION ADMINISTRATOR
REGULATORY PROGRAM MGR (CIVIL RIGHTS BUREAU CHIEF)
PROGRAM OFFICER I TITLE VI, VII, EEO CONTR & LABOR COMPLIANCE
COMPLIANCE SPECIALIST III
STATISTICAL TECHNICIAN II
ADMINISTRATIVE AIDE II
PROGRAM OFFICER I (DBE/MBE PROGRAM MANAGER)
PROGRAM SPECIALIST II
PROGRAM SPECIALIST II SUPPORTIVE SERVICES

ORGANIZATIONAL CHART
CIVIL RIGHTS BUREAU
DEPARTMENT OF HIGHWAYS

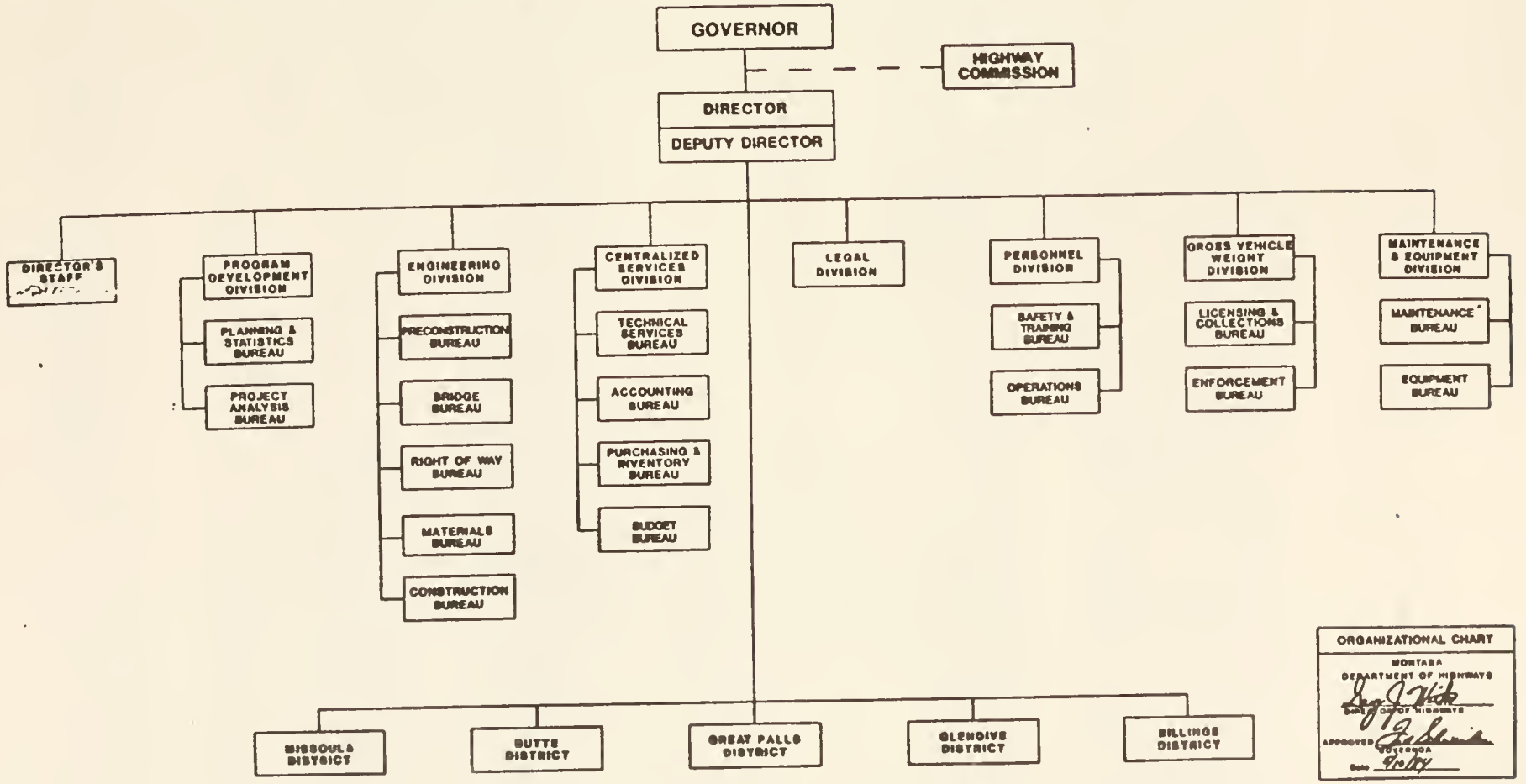
ATTACHMENT 11

PERSONNEL DIVISION



ORGANIZATIONAL CHART
PERSONNEL DIVISION
DEPARTMENT OF HIGHWAYS

MONTANA DEPARTMENT OF HIGHWAYS



NONDISCRIMINATION POLICY STATEMENT

AND ASSURANCES

Title VI of the 1964 Civil Rights Act provides that no person in the United States shall on the grounds of race, color, or national origin be discriminated against under any program or activity receiving federal financial assistance. A prohibition against discrimination on the ground of sex is included by amendment. "The Title VI Program" also refers, where appropriate, to other federal civil rights statutes. The State of Montana through its Constitution, Codes and Rules forbids discrimination in many areas.

(MPO) assures that no person shall, as provided by federal and state civil rights laws, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which federal assistance is received.

_____

Signature

I OVERVIEW

A. PURPOSE

To provide guidelines for the implementation of the Federal Highway Administration (FHWA) Title VI compliance program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations by the (MPO), and define (MPO) organizational utilization procedures.

B. APPLICATION

The provisions of this Title VI plan (Plan) apply to all recipients of federal assistance within and through MDOH.

C. DEFINITIONS

All applicable definitions are found in 23 CFR 200.5. See Appendix I.

D. AUTHORITIES

Federal statutes to the extent they apply to programs receiving federal financial assistance subject to Title VI are found in 23 CFR 200.5 (p) (1). (See Appendix I)

Other federal statutes with related authority which may apply:

1. Title VII of the 1964 Civil Rights Act as amended.
2. The Age Discrimination in Employment Act.
   a. 45 CFR 90
3. The Vocational Rehabilitation Act of 1973.
   a. 49 CFR 27.

State nondiscrimination statutes:

1. The Montana Human Rights Act, Title 49, Chapter 2, M.C.A.
2. The Governmental Code of Fair Practices, Title 49, Chapter 3, M.C.A.

E. ORGANIZATION

The organizational chart for (MPO) is found in Appendix II.

The (position title) has Title VI responsibility for the (MPO) and is responsible for initiating and monitoring Title VI activities, preparing required documents, conducting complaint investigations, and generally implementing the procedures described in the Program. The (position title) also has the authority to delegate responsibility for certain items to other individuals, where appropriate. All reports, investigations and reviews will be submitted to the (MPO Director), within the proscribed time constraints. The Montana Department of Highways will be notified of any deficiencies or problems.

II AGENCY RESPONSIBILITIES

A. DATA ACQUISITION

It is the policy of the (name of MPO) to determine the number and general location of minority residents within the urbanized area using the best available information. This data will be considered in the evaluation of projects, project priorities, transportation plans, and the overall transportation planning process to assist in the identification of needs and impacts relating to minority groups or individuals.

Updated data will be submitted to the Department of Highways as requested by the Department. The data submitted will be considered by the Urban Planning Section in all related studies and plans prepared by the Section.

B. CITIZEN PARTICIPATION

Citizen participation is encouraged and sought in the local planning process for both comprehensive and transportation planning. Community groups and committees which include

minority, low income, elderly and handicapped persons in their membership are identified and solicited for participation. The (name of MPO) through the news media and formal notification solicits minority organizations, groups and individuals to actively participate in all phases of the planning process. Appropriate notices are sent to the following local organizations representing minorities and/or other Title VI protected groups.

(list)

Input obtained through citizen participation is considered in the evaluation of projects, project priorities, transportation plans, and the overall transportation planning process to assure that the needs of Title VI protected groups are being identified and addressed.

C. CONSULTANT SERVICES

When it becomes necessary for the (name of MPO) to obtain consultant services using PL funds, Title VI requirements will be addressed throughout the process. The Urban Planning Section of the Department of Highways will monitor PL funded consultant contracts. Firms will be selected in accordance with (name of MPO) Consultant Selection Procedures and contracts with firms or individuals performing consultant services will include Title VI compliance requirements. The contract will be monitored throughout its duration by the MPO and DOH to insure that Title VI effects are being addressed. (Name of MPO) Consultant Selection Procedures will be evaluated by DOH before commencing the selection process to insure that Title VI concerns are adequately addressed.

(Name of MPO) will solicit proposals from qualified MDOH certified Disadvantaged Business Enterprises.

(Name of MPO) will insure that contractors performing MDOH federal aid funded projects will solicit proposals from qualified MDOH certified Disadvantage Business Enterprises when seeking subcontractors.

(Name of MPO) will provide information to MDOH when firms who have the potential to become certified are identified.

III COMPLAINT PROCEDURES

A. PURPOSE

The purpose of the complaint procedures is to facilitate resolution of the problem at the lowest level possible. The procedure must function to determine whether or not a violation of a law or regulation has occurred, and if so, the appropriate means for relief and/or corrective action. It is developed under the directive of 23 CFR 200.99(b)(3).

A log shall be maintained of all complaints. A copy of the complaint, together with a copy of MPO's report of the investigation shall be forwarded to MDOH within 60 days of the date the complaint was received by the MPO.

B. DEFINITIONS

1. Complaint: means a complaint alleging a violation of any policy, procedure, or practice which would be prohibited by Title VI and other federal and state civil rights laws, rules, and regulations.

2. Complainant: means any aggrieved person or individual who submits a complaint.

3. Complaint Investigation Form: means the form which shall, pursuant to 23 CFR 200.9(b)(3), identify each complainant by race, color, sex or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; and other pertinent information. A sample "form" is found in Appendix VI.

4. Day: means a working day; the calculation of days in a complaint procedure shall exclude Saturdays, Sundays and state holidays.

5. Federal and State Civil Rights Laws, Rules and Regulations: See "I OVERVIEW," "D Authority."

6. Investigator: the person within the MPO, normally the Title VI Representative, with the assigned responsibility to investigate complaints.

7. Respondent: means any person, persons or agency against whom a complaint is filed.

8. Title VI: means Title VI of the 1964 Civil Rights Act (78 Stat.252, 42 U.S.C., Sec.2000d), the implementing regulations and any memoranda, directives, guidelines or subsequent legislation that may be issued or enacted.

9. Title VI Representative: The individual within an MDOH respective program area with Title VI responsibilities.

C. BASIC PROCEDURAL RIGHTS (Applicable to all levels of the complaint process)

1. Each party shall have the right to representation, to present witnesses and evidence, and to question opposing witnesses.

2. Intimidation or retaliation of any kind is prohibited by law.

3. This procedure does not deny the right of the complainant to file formal complaints with other state or federal agencies or to seek private counsel for complaints alleging discrimination.

D. PROCEDURE

1. A complainant with a complaint should first discuss it with the responsible person or persons involved with the objective of resolving the matter promptly and informally. Employees who may be subject to the limited Title VI employment coverage should first discuss the problem with their supervisor. Such discussion shall occur within 10 days of the alleged incident or from the date the complainant could reasonably become aware of such incident.

2. If the complaint is not resolved at step 1, a written complaint shall be filed with the MPO within 10 days of the alleged incident. The Montana Department of Highways shall be notified of the complaint within five days.

3. Within seven days of the receipt of the complaint, an investigation by the (position title) will commence. The investigation shall include interviews with the complainant and the respondent. Relevant data shall be obtained. Interrogatories may be used. Informal conferences between the affected parties under the direction of the investigator may be utilized for resolution.

4. Within 40 days of the alleged incident, the investigator will prepare a written report for the MPO. The report shall include a report of the incident, persons interviewed, respective positions, a finding and recommendation for disposition.

5. The recommendation shall be reviewed by the (position title) and forwarded to the (position title) within five days of receipt.

6. The (position title) shall make the final determination for MPO. Such determination shall be forwarded to MDOH within five days.

7. If the complaint cannot be resolved by (MPO), the complainant shall be notified of all appeal rights pursuant to 49 CFR 21 as well as other applicable forms including the right to counsel.

8. Should the complainant decide not to pursue the complaint, a signed withdrawal statement shall be obtained. (See Appendix V)

APPENDIX IV

COMPLAINT INVESTIGATION FORM

File No._____

Work Phone_____

Home Phone_____

Complainant_____

Address_____City_____

Race: White Black (not Hispanic Origin) Hispanic

Asian or Pacific Islander American Indian or Alaskan Native

Sex: Male Female

National Origin (Specify)_____

Respondent_____

Address_____City_____

Nature of Complaint (Please give details, dates, times, how treated differently from someone else. Use additional sheets if necessary):

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Reason given for action:

_____
_____
_____
_____
_____
_____

Witnesses (Use additional sheets if necessary):

Name_____ Home Phone_____
Work Phone_____
Address_____ City_____

Name_____ Home Phone_____
Work Phone_____
Address_____ City_____

Other pertinent complaint information:

_____
_____
_____
_____

_____ _____
Signature of Complainant Date

_____
FOR STATE USE ONLY
_____

Recommend Disposition: Investigation completed_____
Date

___ Reasonable Cause

Recommended Action:_____
_____

___ No Cause Administrative Closure
(No jurisdiction Withdrawn
Untimely Other)

___ Settlement (specify)_____
_____

I concur with the above recommendation of the MPO.

_____ _____ _____
Title Date

I concur with the recommendation of the Civil Rights Bureau.

_____ _____ _____
Title Date

Date forwarded to FHWA, Montana Division_____

Approved by (Name of MPO) Date:

_____ _____
(Title)

Approved by Department of Highways Date:

_____ _____
(Title)

Attest by Department of Highways Date:

_____
(Title)